

JS-6

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED DESERT CHARITIES,  
FRED EDE, III, EMILY WILLIAMS,  
BRUCE PRITCHARD, and JEAN  
STEINER, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

SLOAN VALVE COMPANY,  
AMERICAN STANDARD BRANDS  
AS AMERICA, INC., KOHLER CO.,  
GERBER PLUMBING FIXTURES,  
LLC, MANSFIELD PLUMBING  
PRODUCTS, LLC, and HOME  
DEPOT, U.S.A., INC.,

Defendants.

Case No. CV12-06878 SJO (SHx)

**FINAL ORDER AND  
JUDGMENT APPROVING  
CLASS ACTION SETTLEMENT**

Action Filed: August 9, 2012

*The Honorable S. James Otero*

Consolidated Cases:

*Berube v. Flushmate*

2:13-cv-02372-SJO-SH

*Brettler v. Flushmate*

2:13-cv-02499-SJO-SH

*Kubat, et al. v. Flushmate*

2:13-cv-02425-SJO-SH

*Patel v. Flushmate*

2:13-cv-02428-SJO-SH

Related Case:

*Dimov, et al. v. Sloan Valve Co.,*

1:12-cv-09700 (N.D. Ill.)

1           Following a hearing on February 10, 2014 (“Preliminary Approval  
2       Hearing”), this Court entered its Order on February 21, 2014 (ECF No. 135) (1)  
3       preliminarily approving class action settlement; (2) certifying settlement class;  
4       (3) approving proposed class notices; and (4) scheduling a final fairness hearing  
5       to determine (a) whether the terms and conditions of the Class Action Settlement  
6       Agreement and Release (“Settlement”) in these consolidated and related cases  
7       (collectively, the “Action”), filed with this Court on January 28, 2014 (ECF No.  
8       116-1), are fair, reasonable, adequate, free from collusion, and in the best  
9       interests of the Class; (b) whether the Settlement should be finally approved by  
10      the Court; and (c) to consider an application by Class Counsel for an award of  
11      attorneys’ fees and expenses, and incentive awards for the Class representatives  
12      (“Preliminary Approval Order”).

13           After due process notice to the Class, the Court held the Final Fairness  
14      Hearing on August 25, 2014 (“Fairness Hearing”). The Court has considered: (1)  
15      the memorandum submitted in support of Plaintiffs’ Motion for Final Approval of  
16      Class Action Settlement (“Final Approval Motion”); (2) the declarations and  
17      exhibits submitted in support of the Final Approval Motion; (3) the memorandum  
18      submitted in support of Class Counsel’s Application for Attorneys’ Fees and  
19      Expenses and for Service Awards (“Fee Application”); (4) the Settlement, the Plan  
20      of Allocation, the Notice Plan, the Class Notices and the Claim Forms; (5) the  
21      entire record in this proceeding, including but not limited to the memorandum in  
22      support of preliminary approval of the Settlement; (6) the oral presentations of  
23      Class Counsel and Counsel for Defendants at the Preliminary Approval and  
24      Fairness Hearings; (7) the Court’s findings and conclusions set forth in its  
25      Preliminary Approval Order; (8) this Court’s observations while presiding over  
26      this matter; and (9) the relevant law.

1           Based upon these considerations, it is HEREBY ORDERED,  
2       ADJUDGED, and DECREED as follows:

3           1.     This Final Order and Judgment (“Final Order”) incorporates and  
4       makes a part hereof: (a) the Settlement, including the Plan of Allocation, the  
5       Notice Plan, the Class Notices, and the Claim Forms and all exhibits thereto;  
6       and (b) the Court’s findings and conclusions in the Preliminary Approval  
7       Order. All capitalized terms in this Final Order shall have the same meanings  
8       as in the Settlement, unless separately defined herein.

9           2.     All preliminary findings and conclusions in the Court’s Preliminary  
10      Approval Order are hereby made final.

11          3.     This Court has jurisdiction over the subject matter and parties to the  
12      Action pursuant to 28 U.S.C. §1332(d)(2) and 28 U.S.C. §1453. This jurisdiction  
13      includes, without limitation, jurisdiction to finally certify the Class for settlement  
14      purposes under Fed R. Civ. P. 23(a) and (b)(3), finally approve the Settlement  
15      under Fed R. Civ. P. 23(e), and dismiss the Action with prejudice.

16          4.     The Class meets the requirements of Fed R. Civ. P. 23(a) and  
17      23(b)(3). The Class consists of any Person who owns or owned a Flushmate  
18      System or Flushmate Toilet installed in the United States. Excluded from the  
19      Class are (a) Defendants; any entity in which a Defendant has a controlling  
20      interest, or which has a controlling interest in a Defendant; Defendants’ legal  
21      representatives, assigns, and successors; and any retailers or wholesalers of  
22      the Flushmate System or Flushmate Toilets; and (b) the Judges to whom this  
23      case is or was assigned and any members of their immediate families. Also  
24      excluded from the Class are (c) all Persons who have obtained a judgment  
25      against Defendants with regard to the Released Claims on or before the date  
26      of Preliminary Approval; (d) all Persons who, prior to Preliminary Approval,  
27      received cash reimbursement from Flushmate for property damage resulting  
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1 from a Burst or Leak in their Flushmate System; (e) all Persons who have  
2 incurred damages as a result of a Leak or Burst of a Flushmate System that  
3 occurred on or before August 9, 2008, but who have not brought any civil  
4 action relating thereto on or before August 9, 2012; (f) all Persons whose  
5 Property previously contained, but no longer contains, a Flushmate System or  
6 Flushmate Toilet, and have not experienced a Leak or Burst of a Flushmate  
7 System or Flushmate Toilet, except Persons who replaced their Flushmate  
8 Toilets in response to the Recall; and (g) all Persons who formerly owned  
9 Property that contained a Flushmate System, and did not experience a Leak  
10 or Burst of a Flushmate System or Flushmate Toilet during their ownership.

11 5. Based upon Plaintiffs' submissions and the record before this  
12 Court, which Defendants controvert but do not contest for settlement  
13 purposes, the prerequisites for a class action under Fed R. Civ. P. 23(a) and  
14 (b)(3) have been satisfied, in that:

- 15 a. The members of the Class are so numerous that joinder of all  
16 members is impractical. Fed. R. Civ. P. 23(a).
- 17 b. This litigation involves common class-wide issues that would  
18 drive the resolution of the claims absent the Settlement. Fed. R.  
19 Civ. P. 23(b); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541,  
20 2551 (2011). Several disputed issues are common to Plaintiffs  
21 and the Class, including whether the Flushmate System is  
22 subject to failure; whether the Flushmate System creates an  
23 unreasonable safety risk; and whether Sloan knew or should  
24 have known that the Flushmate System was allegedly  
25 defective.
- 26 c. The claims of the named Plaintiffs are typical of the claims of  
27 the Class. Fed. R. Civ. P. 23(c). Typicality is satisfied because  
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1 the conduct at issue is alleged to have caused similar harm at  
2 the point of purchase to Plaintiffs and the Class.

- 3 d. The named Plaintiffs are adequate Class representatives and  
4 possess the same interests in the outcome of this case as the  
5 other Class members. Fed. R. Civ. P. 23(d). The named  
6 Plaintiffs — like all Class members — own one or more  
7 Flushmate Toilets. Accordingly, the Court finally appoints as  
8 Class representatives Plaintiffs United Desert Charities, Fred  
9 Ede, III, Emily Williams, Bruce Pritchard, Jean Steiner,  
10 Daniel Berube, Jeffrey Brettler, Randy Kubat, John Snyder,  
11 Milen Dimov, Trigona Dimova, Scott Iver, Neal Olderman,  
12 and Pankaj Patel.
- 13 e. Additionally, having found the following firms qualified to  
14 serve as Class Counsel, the Court finally appoints as Class  
15 Counsel Birka-White Law Offices, Lieff Cabraser Heimann &  
16 Bernstein, LLP, Parker Waichman LLP, Levin Fishbein,  
17 Sedran & Berman, LLP, Audet & Partners, LLP, Wexler  
18 Wallace, LLP, Holland Groves Schneller & Stolze LLC, and  
19 Geragos & Geragos, P.C.
- 20 f. Class Counsel and the Class representatives have fully and  
21 adequately represented the Class in the Action, and in entering  
22 into and implementing the Settlement, and accordingly have  
23 satisfied the requirements of Fed. R. Civ. P. 23(a)(4).
- 24 g. The Court also finds that common issues predominate and the  
25 Settlement is a superior way to resolve this national  
26 controversy. Fed. R. Civ. P. 23(b)(3). The claims of fraudulent  
27 representations and omissions and other breaches focus  
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1 primarily on Defendants' conduct, and the economic loss  
2 claims share a common damages measurement.

3 h. Therefore, the Court finally certifies the Class under Fed. R.  
4 Civ. P. 23(a) and 23(b)(3) for settlement purposes only.

5 i. These findings shall be vacated and have no preclusive effect  
6 in this or any other forum in the event this Final Order is for  
7 any reason (whether as a result of reconsideration, appeal, or  
8 otherwise) vacated and the Settlement is disapproved, or if the  
9 Settlement otherwise does not become Final or Effective for  
10 any reason, including without prejudice to Defendants' rights  
11 to contest class certification.

12 6. This Court finds that the Claims Administrator and Notice  
13 Provider caused notice to be disseminated to the Class in accordance with  
14 the Notice Plan and the Preliminary Approval Order, and that notice was  
15 given in an adequate and sufficient manner and complies with Due Process  
16 and Fed. R. Civ. P. 23. The Court further finds that the Notice Plan was  
17 reasonable and provided due, adequate, and sufficient notice to all Persons  
18 entitled to receive notice. The Notice Program complied with Fed. R. Civ. P.  
19 23(c)(2)(B) because it constituted the best notice practicable under the  
20 circumstances and provided individual notice to all Class members who  
21 could be identified through reasonable effort and extensive published notice,  
22 as detailed in the Notice Plan. The Court specifically finds that the Class  
23 Notices:

24 a. Were simply written and were readily understandable;

25 b. Were reasonably and fairly calculated to apprise Class  
26 members of (i) the pendency of the Action and the claims asserted by  
27 the Class, (ii) the allegations that are basis for the Action, (iii) the  
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1 Class definition, (iv) the terms of the proposed Settlement, including  
2 how Class members may receive benefits, (v) the maximum amount  
3 of attorneys' fees that would be sought by Class Counsel, and the  
4 proposed incentive awards for the Class representatives, (vi) the  
5 Class members' right to object to or opt out of the Settlement and the  
6 time and manner for doing so, (vii) their right to appear at the  
7 Fairness Hearing (either on their own or through counsel hired at  
8 their own expense) if they did not exclude themselves from the  
9 Class, and (viii) the binding effect of the Settlement and anticipated  
10 Final Order on all persons who did not timely and validly request  
11 exclusion from the Class;

12 c. Informed the Class members of the general risks of  
13 continued litigation; and

14 d. Identified the website address for Class members to use  
15 to submit claims and/or to obtain additional information regarding the  
16 Settlement.

17 7. In addition, based on the submissions of the parties, the Court finds  
18 that on February 7, 2014, Defendants fully satisfied their obligations of providing  
19 Notice of the proposed Settlement to the public officials designated under the  
20 Class Action Fairness Act, 28 U.S.C. § 1715, to receive such notice as set forth  
21 in the Settling Defendants' Notice of Compliance with 28 U.S.C. § 1715, filed  
22 March 7, 2014. (ECF No. 138.)

23 8. Plaintiffs, by and through their counsel, have investigated the  
24 pertinent facts and law, have engaged in motion practice and discovery, and  
25 have evaluated the risks associated with continued litigation, class  
26 certification, trial, and/or appeal. The Court finds that the Settlement was  
27 reached in the absence of collusion, is the product of informed, good-faith,  
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1 arms-length negotiations between the parties and their capable and  
2 experienced counsel, and was reached with the assistance of a well-qualified  
3 and experienced mediator, the Honorable William J. Cahill (Ret.). The Court  
4 further finds that this litigation is complex and that if it were to continue  
5 through trial and potential subsequent appeals, it would likely be both  
6 contentious and protracted. The Court also notes that Defendants have asserted  
7 numerous defenses to the Plaintiffs' claims and have vigorously denied any  
8 liability or damage, that Plaintiffs' ultimate success in the litigation is not  
9 guaranteed, and that the risks of establishing liability on behalf of Class  
10 members are significant.

11         9. The Court finds that the Settlement confers substantial benefits  
12 upon the Settlement Class and avoids the costs, uncertainty, delays, and other  
13 risks associated with continued litigation, trial, and/or appeal. Defendants will  
14 pay a minimum of \$18,000,000 into a common fund benefiting owners of the  
15 Flushmate Toilets at issue in this case. The cash payment may increase if the  
16 fund is insufficient to satisfy certain unpaid Eligible Property Damage claims  
17 made under the Settlement, provided that the Settlement Fund and Claims  
18 Administration Trust Accounts are exhausted and the total amount of  
19 approved Eligible Property Damage claims submitted during the Claims  
20 Period and paid from the Claims Administration Trust Account to Class  
21 members exceeds \$1,500,000 in the aggregate. The Claims Period will last for  
22 at least two years to enhance Class members' ability to obtain benefits from  
23 the Settlement. Moreover, the Settlement will advance the public safety  
24 inasmuch as it is structured to maximize Class members' incentive to repair or  
25 replace their Flushmate Toilets.

26         10. The Court has been informed that no objections to the Settlement  
27 were submitted in accordance with the requirements of the Class Notices and  
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1 the Preliminary Approval Order, and has been further informed that 28  
2 Persons have submitted timely requests to be excluded from the Class in  
3 accordance with the requirements of Class Notices and the Preliminary  
4 Approval Order. The Court has evaluated this overall reaction of the Class to  
5 the Settlement, and finds that the overall acceptance of the Settlement by Class  
6 members supports the Court's conclusion that the Settlement is in all respects  
7 fair, reasonable, adequate, and in the best interests of the Class.

8 11. Because the terms and provisions of the Settlement have been  
9 entered into in good faith and are in full compliance with all applicable  
10 requirements of the United States Constitution (including its Due Process  
11 Clause), the Federal Rules of Civil Procedure, the rules of this Court and any  
12 other applicable law, and are fair, reasonable, and adequate and in the best  
13 interests of the Class, the Court hereby finally approves the Settlement.

14 12. The parties and the Claims Administrator are directed to  
15 implement the Settlement according to its terms and conditions.

16 13. Defendants shall deposit Settlement Payments into the Settlement  
17 Fund Trust Account in accordance with Section IV of the Settlement.

18 14. Class Litigation Administration Support Services of Lancaster,  
19 California, is finally appointed to serve as the Claims Administrator as  
20 provided under the Settlement and Plan of Allocation. All reasonable fees,  
21 costs, and expenses of the Claims Administrator shall be paid as provided in  
22 the Settlement. The Claims Administrator is directed to begin processing all  
23 validly filed claims in accordance with Section V of the Settlement and the  
24 Plan of Allocation.

25 15. The Hon. William J. Cahill (Ret.) of JAMS, San Francisco,  
26 California, is finally appointed to serve as the Special Master as provided for  
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1 under the Settlement and Plan of Allocation. All reasonable fees, costs, and  
2 expenses of the Special Master shall be paid as provided in the Settlement.

3 16. Except as to those Persons listed on Exhibit A hereto who have  
4 timely submitted valid requests for exclusion from the Settlement, this Final  
5 Order and the Settlement shall be forever binding on Plaintiffs and each Class  
6 member, as well as their heirs, executors, administrators, and their respective  
7 predecessors, successors, representatives and assigns, or any and all of them,  
8 and those terms shall have res judicata and preclusive effect in all pending and  
9 future claims, lawsuits, or other proceedings involving the Released Claims in  
10 any state, federal, or territorial court, arbitral forum or other forum of any  
11 kind.

12 17. Plaintiffs and each Class member, as well as their respective  
13 spouses, heirs, executors, administrators, representatives, agents, attorneys,  
14 subrogees, partners, successors, predecessors, and assigns, and all those acting  
15 or purporting to act on their behalf, is conclusively deemed to have fully,  
16 finally, and forever released, relinquished and discharged Defendants and the  
17 Released Parties from and against any and all liability for the Released Claims  
18 as set forth in Section VI of the Settlement.

19 18. Plaintiffs and each Class member are barred and permanently  
20 enjoined from initiating, asserting and/or prosecuting any Released Claims  
21 which the Class member had, has or may have in the future against any  
22 Defendant or Released Party in any court, arbitration, tribunal, or forum of any  
23 kind. The Court finds that issuance of this permanent injunction is necessary  
24 and appropriate in aid of the Court's jurisdiction over this Action and to  
25 protect and effectuate this Final Order.

26 19. As set forth in the Settlement, Defendants have denied, and  
27 continue to deny, any wrongdoing or liability of any kind relating to the  
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1 Action. Neither this Final Order, nor any provisions of the Settlement or any  
2 negotiations leading to its execution, may be construed as, offered as, received  
3 as, used as, or deemed to be evidence of an admission of any liability or  
4 wrongdoing of any kind on the part of Defendants and the Released Parties in  
5 the Action, or in any other judicial, administrative, regulatory, or other forum  
6 of any kind.

7 20. Without affecting the finality of this Final Order, the Court  
8 reserves exclusive jurisdiction as to all matters related to administration,  
9 consummation, enforcement, and interpretation of the Settlement and this  
10 Final Order, including, without limitation, for the purpose of:

11 a. enforcing the terms and conditions of the Settlement and  
12 resolving any disputes, claims, or causes of action that, in whole or in  
13 part, are related to or arise out of the Settlement or this Final Order  
14 (including, without limitation, whether a person or entity is or is not a  
15 Class member and whether claims or causes of action allegedly related to  
16 the Action are or are not barred or released by this Final Order and the  
17 Settlement);

18 b. entering such additional orders, if any, as may be necessary or  
19 appropriate to protect or effectuate this Final Order and the Settlement, or  
20 to ensure the fair and orderly administration of the Settlement; and

21 c. entering any other necessary or appropriate orders to protect  
22 and effectuate the Court's retention of continuing jurisdiction.

23 21. The Action is hereby dismissed with prejudice in its entirety,  
24 except to the extent that this Court has maintained continuing jurisdiction as  
25 stated in paragraph 20 above. Except as expressly granted by this Final Order  
26 and as set forth in the Settlement, it is adjudged that Plaintiffs and all Class  
27 members take nothing by reason of the Action against Defendants, and their  
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1 claims are hereby dismissed with prejudice. There is no just cause to delay  
2 appeal or enforcement of this Final Order.

3 IT IS SO ORDERED.

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5 Dated: August 25, 2014.

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S. James Otero  
7 United States District Judge

**EXHIBIT A****Timely Submitted Exclusion Requests**

1.	Adamik, M. Brian
2.	Bauer, Dennis
3.	Bentzel, Karen S.
4.	Biberfeld, Ellen J.
5.	Boddy, Ethelyn
6.	Bolenbaugh, Burdette A.
7.	Cardenas, Jose R.
8.	Chew, Richard
9.	Frankel, Rhoda
10.	Holeman, Bruce
11.	Kanode, Steven
12.	Keppen, Steven
13.	Kuznicki, Benjamin
14.	Leon, Gabriel
15.	Martyn, Keith
16.	McFalda, Judy A.
17.	Miller, Richard
18.	Mullan, John W.
19.	Norris, Kaye
20.	Paesani, Annette
21.	Plagany, Elaine
22.	Plagany, Tom
23.	Preston, Barbara
24.	Rowan, Bryan
25.	Turley, Amy
26.	Turley, Kyle
27.	Whittington, Ken
28.	Yalmokas, Richard